Supreme Court, U. S.
FILED
SEP 12 1974
MICHAEL RODAK, JR., CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1974

No. 74-54

SANDRA WEAR,

vs.

BRADA MILLER FREIGHT SYSTEMS, INC.,
Respondent,

and

TRANSAMERICAN FREIGHT LINES, INC.,
Petitioner.

RESPONDENT'S BRIEF

In Opposition to Petition for Writ of Certiorari

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Respondent Brada Miller Freight Systems, Inc. (Brada Miller) hereby files its brief in opposition to Transamerican Freight Lines, Inc.'s (Transamerican) Petition for a Writ of Certiorari to review the judgment and decision of the United States Court of Appeals for the Seventh Circuit entered May 6, 1974.

STATEMENT OF THE CASE

The facts as set out in Transamerican's Statement of the Case are generally accurate except that Respondent denies that Hardrick was its employee. In addition, the Lease Agreement referred to therein contains the following provisions:

Paragraph 3:

> "Second party (Brada) further agrees that it will bear the entire cost of operating said motor vehicle equipment, and that it will at all times keep said motor vehicle equipment in good mechanical condition, order and repair, and will cause said motor vehicle equipment to be operated only by a competent employee of the second party, in which event said employee of the second party shall be the representative of the second party in the premises. It being expressly understood and agreed that nothing herein is to be construed as constituting second party, its agents, servants and employees, as the agent, servant and employee or representative of the first party."

Paragraph 5:

> "Second party further agrees that in the operation of said motor vehicle equipment it will comply with all the rules and regulations of the Bureau of Motor Carriers of the Interstate Commerce Commission, and the applicable rules and regulations of any public utility commission and of any other similar state authority; that it will observe all pertinent rules and regulations governing the hours of service of its drivers or helpers, and all regulations, laws and ordinances of any government authority applying to the operation upon the public highways of said motor vehicle equipment, that it will pay any and all federal or state withholding taxes, assessments, unemployment insur-

> ance, old age insurance, or other social security payments that may become due by reason of the payment of wages or other earnings to the driver of said motor vehicle equipment, or to any helper, or to any person or persons engaged in the carrying out of this Agreement upon the part of second party, and further agrees to meet all laws or regulations now or hereafter adopted or promulgated by legally constituted authorities in respect thereto."

ARGUMENT

Transamerican seeks to bring itself within the rule of *Allstate Insurance Company v. Alterman Transport Lines, Inc.* (5th Circ. 1972), 465 F.2d 710, which is in conflict with decisions of the Seventh Circuit in *Alford v. Major* (7th Circ. 1972), 470 F.2d 132, and the present case, *Sandra Wear v. Transamerican Freight Lines, Inc., and Brada Miller Freight Systems, Inc.*, number 73-1773, not yet reported.

It is submitted, however, that under the facts in this case, Transamerican does not fall within the rule announced in *Allstate*. Although Transamerican did exercise complete control over the driver and the tractor, the lease agreement under which Transamerican seeks indemnity from Brada Miller is in violation of Interstate Commerce Commission Regulations.

Under Paragraph 3 of the Lease Agreement, Brada Miller, during the period of the trip lease, is required to keep the equipment in good order and repair, a duty that the I.C.C. puts squarely on Transamerican. Paragraph 5 requires Brada Miller "in the operation of said motor vehicle equipment" to comply with various rules and regulations including rules "governing the hours of service of its drivers or helpers" and regulations "applying to the operation upon the public highways of said motor vehicle equipment". Brada Miller also must pay taxes, etc. on behalf of the driver and "any persons engaged in the carrying out of this agreement on the part of (Brada Miller)". If absolute control is in Transamerican, how can Brada Miller do these things. Obviously it cannot. The lease therefore violates the I.C.C. regulations in that it places on Brada Miller, duties and responsibilities which the I.C.C. places on Transamerican..

In attempting to bring itself under the rule announced in *Allstate*, Transamerican must show not only that it did in fact

exercise control over the driver and the tractor, but also that its Lease Agreement under which it seeks indemnity from Brada Miller complied with the I.C.C. regulations. This it cannot do.

CONCLUSION

Although a conflict does exist between the decisions of the various Courts of Appeals on the question of the validity of indemnity provisions of trip lease agreements, Transamerican's trip lease agreement violates I.C.C. regulations and Transamerican does not fall within the rule announced in the Allstate case. Transamerican's Petition for a Writ of Certiorari should therefore be denied.

Respectfully submitted

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